

## REMARKS

Applicant respectfully requests reconsideration of the instant application in view of the amendments, herein, and the following remarks:

The following claims are *pending*: 1-13, 15, 16, 18 and 37-45.

The following claims have been previously canceled without prejudice or disclaimer: 14, 17, and 19-36.

The following claims are *independent*: 1, 16, 42 and 45.

Please *amend* claims 1, 16, 42 and 45; although these claims have been amended herein to provide clarification, correct typographical inaccuracies and/or informalities, and/or to better track practical/commercial implementations/practices (hereinafter “amendment,” “amendments,” and/or “amended”), Applicant submits that the originally filed claims are patentable and reserves the right to pursue the originally filed claims (as well as any claims dependent therefrom) at a later time and/or in one or more continuation/divisional application(s). Applicant submits that these new claims and/or claim amendments are supported throughout the originally filed specification and that no new matter has been added by way of these amendments.

### Claim Rejections - 35 U.S.C. § 103

The Office Action rejected claims 1-11, 15-16, 18 and 37-45 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Pub 2002/0188539 A1 to Axelrad et al. (hereinafter “Axelrad”), in view of U.S. Pub 2001/0049651 A1 to Selleck (hereinafter “Selleck”), and further in view of U.S. Pub 2002/0069156 A1 to Adam et al. (hereinafter “Adam”). The Office

Action rejected claims 12-13 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Axelrad, Selleck and Adam as applied to claim 1 above, and further in view of U.S. Pub No. 2002/0198833 A1 to Wohlstadter (hereinafter “Wohlstadter”).

### **Requirements to Establish Prima Facie Obviousness**

The Supreme Court in *Graham v. John Deere Co. of Kansas City* prescribed that a *prima facie* showing of obviousness under 35 U.S.C. § 103 requires that, "the obviousness or nonobviousness of the subject matter [be] determined," and details further requirements, commonly referred to as "Graham factors," which include that "[1] the scope and content of the prior art [be] determined, [2] differences between the prior art and the claims at issue [be] ascertained, and [3] the level of ordinary skill in the pertinent art [be] resolved." *Graham*, 383 U.S. at 1, 17 (1966). To comply with the Graham factors, as introduced in *Graham* and reaffirmed in *KSR Intern. Co. v. Teleflex Inc.*<sup>1</sup>, MPEP § 706.02(j) prescribes that a rejection under 35 U.S.C. § 103 should set forth:

- (A)** the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate;
- (B)** the difference or differences in the claim over the applied reference(s);
- (C)** the proposed modification of the applied reference(s) to arrive at the claimed subject matter; and
- (D)** an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

<sup>1</sup> The “[Graham] factors continue to define the inquiry.” 550 U.S. 398 (2007).

The MPEP prescribes that, “when evaluating the scope of a claim, *every limitation in the claim must be considered*,” (§ 2106 II(C), emphasis added) and, “*All words* in a claim must be considered in judging the patentability of that claim against the prior art.” (§ 2143.03, emphasis added). Applicant submits that the pending rejection has failed to consider “every limitation in the claim” and “[a]ll words in [the] claim” in judging the patentability of the claim against the prior art by mischaracterizing claim elements and/or over-generalizing the applied reference(s). As with this Office Action, when the Examiner mischaracterizes and/or provides references that are missing claimed elements, then the Examiner has failed to fulfill MPEP § 706.02(j) requirements **(A)** and **(B)** and as a consequence, has failed to establish a *prima facie* case of obviousness. 35 U.S.C. § 103.

### **Missing Claim Element(s)**

Applicant submits the cited references (taken alone or in combination) do not discuss, do not render obvious, and are in fact missing at least the following element(s) as recited, *inter alia*, in *amended* independent claim 1:

A processor-implemented method for facilitating definition of a transaction agreement associated with a plurality of different product types, comprising:

...

wherein the covered product matrix identifies at least one product type and at least one financial transaction instrument associated with the proposed transaction agreement, and additional party-counter party agreement information;

....

The Office Action acknowledges “[n]either Axelrad nor Selleck disclose a covered products matrix containing a plurality of product types, transaction instruments and additional party/counter-party agreement information,” but then alleges Adam’s Figure 4

and paragraphs 25, 30, 56-58 remedy the deficiencies in Axelrad and Selleck (Office Action, p. 6, ¶ 1). Applicant respectfully traverses the Examiner's characterization of Adam.

Contrary to the Examiner's assertions, Applicant submits Adam shows a trading screen of general market data of agricultural commodities instead of the claimed "covered products matrix containing ... party-counterparty agreement information." For example, Applicant notes Adam's Figure 4 shows a "graphical display in a concatenated set of windows and sub-windows" of market data, including an "interest list" of commodities of a user, a list of commodities in the "Spot Market" including current "ask" and "bid" prices of each commodity (Adam, Figure 4, ¶ 0044-0046). Applicant submits Adam's screen of general market data providing a list of commodity labels and listed ask/bid prices shows a bidding process to negotiate commodity prices without establishing any "party-counterparty agreement," much less the claimed "covered products matrix identifies at least one of the plurality of product types associated with the transaction agreement, at least one financial transaction instrument according to the at least one product type and additional party-counter party agreement information" as recited in amended independent claim 1.

As such, Applicant respectfully submits a *prima facie* case of obviousness is not established with regard to independent claim 1. Should the Examiner maintain her position, Applicant request the Examiner provide explicit, specific clarification and discussion with particularity of any alleged prior art and its alleged relevance to the claims; more specifically, Applicant request the Examiner provide further clarification as to how Adam's trading screen of general market data allegedly renders obvious the claimed "covered products matrix indicat[ing] at least one covered product type and at least one financial transaction

instrument associated with the transaction agreement between a party and a counter-party" as recited in amended independent claim 1.

Although of different scope than claim 1, Applicant submits that independent claims 16, 42 and 45 are patentable over the cited references, taken alone or in combination, for at least similar reasons as discussed above identifying deficiencies in the applied references with regard to independent claim 1. Furthermore, Applicant submits that claims 2-13, 15, 18, 37-41, 43-44 which depend directly or indirectly from independent claims 1, 16 and 45, respectively, are also not discussed or rendered obvious by the cited references, taken alone or in combination, for at least similar reasons as those discussed above identifying deficiencies in the applied references with regard to the independent claims.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and allowance of claim(s).

## **CONCLUSION**

Consequently, the reference(s) cited by this Office Action and/or any previous office action(s) (hereinafter "Office Action(s)") do not result in the claimed invention(s), there was/is no motivation, basis and/or rationale for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed invention(s) are not admitted to be prior art. Also, Applicant does not accept, admit, and/or concede to any Official Notice that has been taken and/or (mis)characterizations of claims made in the Office Action(s). Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 1-13, 15, 16, 18 and 37-45, all: overcome all rejections and/or objections as noted in the Office Action(s), are patentable over and

discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements and/or bases for rejection were not discussed as they have been rendered moot based on the above amendments and/or remarks, Applicant asserts that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art and reserves the opportunity to more particularly traverse, remark and/or distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to any Office Action(s) objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to other Office Action(s) objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim element(s), and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim element(s) have been anticipated and/or rendered obvious by any of the cited reference(s) and/or any Official Notice. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

**Authorization**

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-339. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-339.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,  
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